

1 TIMOTHY S. LEIMAN, Ill. Bar No. 6270153

Email: leimant@sec.gov

2 PAUL M. G. HELMS, Ill. Bar No. 6291623

Email: helmsp@sec.gov

3 PETER SENECHALLE, Ill Bar No. 6300822

Email: senechallep@sec.gov

4 175 West Jackson Boulevard, Suite 900

5 Chicago, Illinois 60604

Telephone: (312) 353-7390

6 Facsimile: (312) 353-7398

7 **LOCAL COUNSEL**

Lynn M. Dean, Cal. Bar No. 205562

8 Email: deanl@sec.gov

United States Securities and Exchange Commission

9 444 S. Flower Street, Suite 900

Los Angeles, California 90071

10 Telephone: (323) 965-3998

Facsimile: (213) 443-1904

11 Attorneys for Plaintiff

12 United States Securities and Exchange Commission

13 **UNITED STATES DISTRICT COURT**

14 **CENTRAL DISTRICT OF CALIFORNIA**

15 **WESTERN DIVISION**

16
17 SECURITIES AND EXCHANGE
18 COMMISSION,

19 Plaintiff,

20 vs.

21 JAMMIN' JAVA CORP., dba MARLEY
22 COFFEE, SHANE G. WHITTLE,
23 WAYNE S. P. WEAVER, MICHAEL K.
24 SUN, RENE BERLINGER, STEPHEN B.
25 WHEATLEY, KEVIN P. MILLER,
26 MOHAMMED A. AL-BARWANI,
27 ALEXANDER J. HUNTER, and
28 THOMAS E. HUNTER,

Defendants.

Case No. 2:15-CV-08921 SVW (MRW_x)

**MOTION FOR ENTRY OF FINAL
JUDGMENT AGAINST
DEFENDANTS MICHAEL K. SUN,
MOHAMMED A. AL-BARWANI,
KEVIN P. MILLER, AND RENE
BERLINGER**

1 Based on the Consents of Defendants Michael K. Sun (“Sun”), Mohammed A.
2 Al-Barwani (“Al-Barwani”), Kevin P. Miller (“Miller”), and Rene Berlinger
3 (“Berlinger”) (together, the “Settling Defendants”), attached as Exhibits 1 through 4
4 (collectively, the “Consents”), and pursuant to Rule 58(d) of the Federal Rules of
5 Civil Procedure, Plaintiff, the U.S. Securities and Exchange Commission
6 (“Commission”), respectfully requests that this Court enter final judgment against the
7 Settling Defendants in the form attached as Exhibits 5 through 8 (collectively, the
8 “Proposed Judgments”).

9 1. On November 17, 2015, the Commission filed a complaint against
10 Jammin’ Java Corp. (“Jammin’ Java”), the Settling Defendants, and five other
11 individuals for violations of the federal securities laws in connection with a
12 \$78 million pump-and-dump scheme. (Dkt. No. 1.)

13 2. On August 8, 2016, the Commission filed an Amended Complaint
14 against the same defendants. (Dkt. No. 121.)

15 3. In the Amended Complaint, the Commission alleged that Sun,
16 Al-Barwani, Miller, and Berlinger violated Sections 5(a) and 5(c) of the Securities
17 Act of 1933 (“Securities Act”), 15 U.S.C. § 77e(a) and (c), by directly or indirectly
18 facilitating an unregistered distribution of its stock to the public. The Commission
19 also alleged that Sun and Berlinger violated Section 13(d) of the Securities Exchange
20 Act of 1934 (“Exchange Act”), 15 U.S.C. § 78m(d), and Rules 13d-1 and 13d-2
21 thereunder, 17 C.F.R. § 240.13d-1 and 13d-2, by failing to make certain beneficial
22 ownership filings with the Commission. Further, the Commission alleged that Sun
23 and Berlinger violated Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and
24 Rules 10b-5(a) and 10b-5(c) promulgated thereunder, 17 C.F.R. § 240.10b-5(a) and
25 (c), by making false statements and misleading omissions in connection with the
26 purchase or sale of securities.

27 4. In the Amended Complaint, the Commission alleged that offshore
28 entities nominally controlled or owned by Sun, Al-Barwani, and Miller sold millions

1 of shares of Jammin' Java stock into the public market and generated millions in
2 trading profits. Sun, Al-Barwani, and Miller then facilitated the distribution of these
3 trading profits, often to other foreign jurisdictions. In exchange, Sun, Al-Barwani,
4 and Miller each received a portion of the trading profits.

5 5. The Commission alleged in the Amended Complaint that Berlinger
6 facilitated the unregistered distribution of Jammin' Java stock and was involved in
7 the transaction between Jammin' Java and Straight Path Capital Ltd. Berlinger
8 served as a trust advisor and fiduciary for six offshore entities through which a
9 portion of the unregistered distribution and pump-and-dump scheme was conducted.
10 Berlinger incorporated the entities, served as an officer and director, opened bank
11 accounts, and carried out transactions on behalf of the entities.

12 6. As to each of the Settling Defendants, the Amended Complaint seeks an
13 order of permanent injunction, disgorgement and prejudgment interest, civil monetary
14 penalties, and a penny stock bar.

15 7. The Settling Defendants each have agreed to resolve this matter with the
16 Commission by consenting to the relief requested in the Proposed Judgments without
17 admitting or denying the allegations in the Amended Complaint.

18 8. In Paragraph 1 of each of the Consents, each of the Settling Defendants
19 acknowledges having been served with the Complaint or Amended Complaint in this
20 action¹ and admits the Court's jurisdiction over each of them and over the subject
21 matter of this action.

22
23 ¹ Al-Barwani and Sun acknowledge service of the Amended Complaint. The
24 Consents for Miller and Berlinger, which acknowledge service of the Complaint, do
25 not reflect receipt of service of the Amended Complaint. Miller and Berlinger,
26 through counsel, were served with copies of the Amended Complaint on August 8,
27 2016 in accordance with Rule 5(b)(3) of the Federal Rules of Civil Procedure and
28 Local Rule 5-3.2.1. (*See* Dkt. No. 121.) Miller and Berlinger acknowledged
receiving service when their counsel filed a request to extend the time to respond to
the Amended Complaint. (*See* Dkt. No. 169.)

1 9. The Proposed Judgment against Sun (a) permanently enjoins him from
2 violating Section 5 of the Securities Act and Section 13(d) of the Exchange Act and
3 Rules 13d-1 and 13d-2 thereunder; (b) orders him to pay disgorgement of \$400,000
4 and prejudgment interest of \$33,796; and (c) prohibits him from participating in an
5 offering of penny stock for five years following the date of entry of the final
6 judgment.

7 10. The Proposed Judgment against Al-Barwani (a) permanently enjoins him
8 from violating Section 5 of the Securities Act; (b) orders him to pay disgorgement of
9 \$270,000 and prejudgment interest of \$41,204; and (c) prohibits him from
10 participating in an offering of penny stock for five years following the date of entry
11 of the final judgment.

12 11. The Proposed Judgment against Miller (a) permanently enjoins him from
13 violating Section 5 of the Securities Act; (b) orders him to pay disgorgement of
14 \$783,369 and prejudgment interest of \$116,631; and (c) prohibits him from
15 participating in an offering of penny stock.

16 12. The Proposed Judgment against Berlinger (a) permanently enjoins him
17 from violating Section 5 of the Securities Act; (b) orders him to pay disgorgement of
18 \$47,070 and prejudgment interest of \$6,692; and (c) prohibits him from participating
19 in an offering of penny stock for five years following the date of entry of the final
20 judgment.

21 13. As reflected in each of the Consents, the Proposed Judgments have been
22 reviewed by each of the Settling Defendants and their counsel.

23 14. On August 31, 2016, Berlinger filed an answer and affirmative defenses
24 to the Amended Complaint. (Dkt. No. 138.) On September 8, 2016, Miller filed an
25 answer and affirmative defenses to the Amended Complaint. (Dkt. No. 140.) On
26 November 14, 2016, Al-Barwani and Sun each filed an answer and affirmative
27 defenses to the Amended Complaint. (Dkt. Nos. 153-54.) Pursuant to Paragraph 10
28

1 of each of the Consents, each of the Settling Defendants withdraws his answer and
2 affirmative defenses to the Amended Complaint.

3 15. The Court previously entered judgment by consent against Defendants
4 Jammin' Java, Stephen B. Wheatley ("Wheatley"), Thomas E. Hunter ("T. Hunter"),
5 Alexander J. Hunter ("A. Hunter"), and Shane G. Whittle ("Whittle").² (Dkt.
6 Nos. 109-10, 151, 156, and 176.) Should the Court grant this motion, the sole
7 remaining defendant will be Defendant Wayne S. P. Weaver ("Weaver"). The
8 Commission's case against Weaver will continue.³

9 16. Under Rule 54(b) of the Federal Rules of Civil Procedure, there is no
10 just reason to delay entry of final judgment as to the Settling Defendants. Entry of
11 the Proposed Judgments will resolve all claims against the Settling Defendants in this
12 action. There is little risk of piecemeal appeals as each has waived his right to appeal
13 from this final judgment, as reflected in Exhibits 1 through 4.

14 17. In addition, entry of the Proposed Judgments will narrow the issues to be
15 resolved at trial, conserving judicial resources and saving the Commission and the
16 Settling Defendants the time and expense of continued discovery and litigation.

24 ² Specifically, on July 6, 2016, the Court entered final judgments as to Jammin' Java
25 and Wheatley. On November 10, 2016 and November 21, 2016, respectively, the
26 Court entered final judgments against T. Hunter and A. Hunter. On April 11, 2016,
the Court entered a final judgment as to Whittle.

27 ³ On March 31, 2017, the Commission filed a motion for summary judgment against
28 Weaver. (Dkt. 171.)

1 WHEREFORE, because the Proposed Judgment will resolve the claims against
2 the Settling Defendants and conserve judicial resources, the Commission respectfully
3 requests that the Court find that there is no just reason to delay entry of final
4 judgment and enter the Proposed Judgments as to Michael K. Sun, Mohammed A.
5 Al-Barwani, Kevin P. Miller, and Rene Berlinger.

6
7 Dated: April 28, 2017

Respectfully submitted,

8 /s/ **Peter Senechalle**

Peter Senechalle

9 U.S. Securities and Exchange Commission

10 Chicago Regional Office

11 175 W. Jackson Blvd., Suite 900

Chicago, Illinois 60604

12 Telephone: (312) 353-7390

13 Fax: (312) 353-7398

senechalpe@sec.gov

CERTIFICATE OF SERVICE

Peter Senechalle hereby certifies that he caused the foregoing document to be electronically filed through the Court's CM/ECF system on April 28, 2017, which automatically sends an electronic copy of the document to all counsel of record.

s/Peter Senechalle